

No. 87-2006

In The

# Supreme Court of the United States

OCTOBER TERM, 1987

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PEOPLE OF THE STATE OF ILLINOIS,

*Petitioner,*

vs.

LOWELL MADISON,

*Respondent.*

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## RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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JURISDICTION

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The decision of the Illinois Supreme Court sought to be reviewed herein rests upon an independent state ground. There is no federal question involved, and, as a consequence, this Court has no jurisdiction under United States Supreme Court Rule 20 or under 28 U.S.C. Section 1257(3).

At issue in this case before the Illinois Supreme Court was the interpretation of Illinois Revised Statutes 1983, Chapter 95½, paragraph 5-403 which provided for administrative inspections of premises licensed under the Illinois Motor Vehicle Code. Subparagraph (6) of that statutory provision provides for the issuance of search warrants under circumstances specified in the statute.

The Illinois Supreme Court specifically decided the case on its interpretation of the statute, stating:

There has been no question raised as to the constitutionality of the statutory scheme authorizing the inspections, or to the specific requirements and restrictions imposed therein on administrative inspections. Thus, our decision in this case does not turn on any fourth amendment analysis, but only upon an interpretation of our State Statute. (*People v. Madison*, 121 Ill. 2d 195 (1988))

Since the Illinois Supreme Court clearly based its decision on its construction of its own statute, this Court is without jurisdiction. *Henry v. Mississippi*, 379 U.S. 443, 13 L.Ed 2d 408, 85 S.Ct. 564 (1963).

## REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

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**THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE DENIED WHEN THE PETITIONER ASSERTS THAT POLICE RELIED UPON AN OPINION OF AN APPELLATE COURT IN CONDUCTING A SEARCH AND SEIZURE, AND THAT OPINION WAS NOT IN EXISTENCE AT THE TIME OF THE SEARCH.**

The Petitioner argues that the police reasonably relied upon an Illinois Appellate Court opinion in conducting their search. It concludes that under the cases of *Illinois v. Krull*, 107 S.Ct. 1160 (1987) and *United States v. Leon*, 104 S.Ct. 3405 (1984), there should be a good faith exception to the warrant requirement based upon that reliance.

Throughout its argument the petitioner asserts that the police relied upon the opinion of *People v. Potter*, 140 Ill. App. 3d 693, 489 N.E.2d 334 (3rd Dist., 1986) in conducting their search of the defendant's premises. The Petitioner states, "The Secretary of State's police had no way of knowing that the *Potter* interpretation of paragraph 5-403(6) was erroneous or otherwise so unreasonable that no one would reasonably rely upon that opinion as expressing the true intent of the statute's warrant requirement. (Petitioner's Brief, p. 9).

However, if the police did in fact rely upon the opinion of *People v. Potter*, 140 Ill. App. 3d 693, they were indeed prophetic, for at the time of the search and seizure at issue in this case, *People v. Potter* had not yet been decided!

The search in question occurred on May 7, 1984 (Petitioner's Brief, p. 4). The *Potter* opinion was filed by the Illinois Appellate Court on January 9, 1986, nearly two years later.

The Petitioner's argument that the police relied upon a not yet decided opinion is a totally untenable assertion. The Petitioner is, therefore, asking this Court to review this case so as to render an advisory opinion.

The Respondent chooses not to respond to the merits of the Petitioner's arguments that a new exception should be carved out of the Fourth Amendment warrant requirement. Regardless of the propriety of such an exception, the case at bar does not present facts upon which such an exception can be made.

The Petitioner has, by filing this Petition, misrepresented the facts of this case to this Court, and, as a consequence, this Petition should be denied.

### CONCLUSION

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For the reasons stated herein, the respondent requests that the Petition For A Writ Of Certiorari be denied.

Respectfully submitted,

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